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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 136

CONRAD E. LANGFIELD, DOING BUSINESS AS THE SOLVITE COMPANY,

Petitioner,

vs.

SOLVENTOL CHEMICAL PRODUCTS, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SOLVENTOL CHEMICAL PRODUCTS, INC.,

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PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This is an application on behalf of Conrad E. Langfield of Northville, Michigan, doing business as The Solvite Company, for a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Sixth Circuit, entered on April 6, 1943. This judgment reversed a decree of the District Court for the Eastern District of Michigan, Southern Division (Arthur F. Lederle, District Judge), in favor of the petitioner (Rec. 263 and following).

The opinion of the Circuit Court of Appeals follows page 278 of the record and is reported in 134 F. (2d) 899.

I.

Jurisdiction.

(a) Federal jurisdiction of the courts below exists under the Federal Trade-Mark Act of 1905 (U. S. C. Tit. 15, Sec. 81 and following) and Sec. 4915 R. S. U. S. (U. S. C. Tit. 35, Sec. 63).

(b) The jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended by Act of Congress of February 13, 1925, 43 Stat. 938; U. S. C. Tit. 28, Sec. 347 (a).

(c) The cases believed to sustain the jurisdiction of this court to grant a Writ of Certiorari in the present case are *Thaddeus Davids* v. *Davids*, 233 U. S. 461, *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corporation*, 305 U. S. 315, and *Mishawaka Rubber & Woolen Manufacturing Co.* v. *S. S. Kresge Co.*, 316 U. S. 203.

II.

The Questions Presented.

The questions here presented involve the construction of the Federal Trade-Mark Act of February 20, 1905 (U. S. C. Tit. 15, Sec. 96), and the right of the owner of a validly registered trade-mark thereunder to be protected against a colorable imitation of it.

III.

Summary and Short Statement of the Matter Involved.

This was an action brought by respondent, Solventol Chemical Products, Inc., under Section 4915 R. S. (35 U. S. C. Sec. 63), seeking judgment authorizing the Commissioner of Patents to register the word Solventol

as a trade-mark for cleaners while petitioner's registered trade-mark Solvite, also for cleaners, was extant. The Commissioner had refused registration to Solventol because of its confusing similarity to petitioner's previously registered and earlier used trade-mark Solvite for the same goods. The authority for the proceeding in the District Court was this court's application to trade-marks of Rev. Stat. Sec. 4915, which in terms deals only with patents (*American Steel Foundries* v. *Robertson,* 262 U. S. 209).

The relevant statutes are in the appendix.

Petitioner counter-claimed for an injunction against the name Solventol as a colorable imitation and an infringement of petitioner's registered trade-mark Solvite. The District Court agreed with the Commissioner of Patents that Solventol was confusingly similar to Solvite, dismissed respondent's bill, and directed an injunction on petitioner's counter-claim. The findings of fact of the District Court are at pages 263-267, of the record. They were not disturbed by the Circuit Court of Appeals. Petitioner's counter-claim averred (Rec. 7) that respondent's alleged trade-mark Solventol is a colorable imitation of petitioner's registered trade-mark Solvite and that the marks are applied to merchandise of substantially the same descriptive properties. This is an allegation of statutory trade-mark infringement. There was no pleading filed by respondent denying the averments of the counter-claim. The two tribunals of the Patent Office where this proceeding originated held that the marks of the parties are confusingly similar. The District Court found as a fact (Rec. 264):

> "The evidence produced in this case fully supports the decisions made by the Patent Office and establishes that the two marks are confusingly similar."

The Circuit Court of Appeals thought that Solvite, the registered trade-mark applied to petitioner's cleaner, was suggestive and not wholly arbitrary. It accordingly

held that Solventol was not confusingly similar to it. In so doing the court imported into the statute a limitation which is not there. The statute defines a trade-mark (U. S. C. Tit. 15, Sec. 108) as including "any mark which is entitled to registration under the terms of this act." Petitioner's mark is entitled to registration and is registered. The statute provides remedies for colorably imitating trade-marks registered under it. No one has questioned the validity of petitioner's registration and under the authority of *Davids* v. *Davids*, 233 U. S. 461, relief should have been given.

The District Court found that there was no evidence which required a conclusion different from that reached by the Patent Office that the marks are confusingly similar but, on the contrary, found that the evidence produced fully supports this conclusion. In these circumstances the decision of this court in *Morgan* v. *Daniels*, 153 U. S. 120, required affirmance. The District Court did this. The reversal by the Circuit Court of Appeals was error.

IV.

Reasons Relied On for the Allowance of the Writ.

1. It is a matter of public importance that trade-marks should be protected against deceptive imitation. The Circuit Court of Appeals has denied petitioner's trade-mark this protection.

2. It is a matter of public importance that statutes designed to protect trade-marks should be applied so as to carry out the purpose of Congress, that the rights conferred on registrants be secured and the remedies against infringement applied.

3. The Federal Trade-mark Statute requires relief against colorable imitation of a registered trade-mark whatever its linguistic derivation and it makes no distinc-

tion between wholly arbitrary and suggestive marks. When registered, such marks are trade-marks and entitled to protection. This right the Circuit Court of Appeals denied petitioner.

4. It is important that the lower Federal Courts observe the express terms of Federal Statutes and not disregard them because they do not happen to conform to the ideas the judges sitting may, at the moment, entertain.

Petitioner asks, therefore, that this court grant a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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